

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT 3, PORT HARCOURT
BEFORE HIS WORSHIP COLLINS G. ALI ESQ.,¹ TODAY WEDNESDAY,
THE 26TH DAY OF APRIL, 2023.

SUIT NO.:PMC/SCC/01/2023.

BETWEEN:

1. PRINCE SAMSON ERUANI	----	1 ST CLAIMANT
2. SAMSKILLOAN INTEGRATED SERVICES LTD	----	2 ND CLAIMANT

AND

1. LINA WOKO	----	1 ST DEFENDANT
2. SUNNESS OKECHUKWU WOKO	----	2 ND DEFENDANT
3. GLORIA WOROMA WORDU	----	3 RD DEFENDANT

Case called.

Parties present except the 3rd Defendant.

JUDGMENT

The 1st Claimant commenced this case against the Defendants on the 6th day of March 2023 after serving the 1st Defendant with mandatory demand notice on the 28th November 2022. The 2nd Claimant was joined as a party by the Order of this Honourable Court on the 29th March 2023. By the summary of claim contained in the particulars of claim attached to the summons, the Claimants claims against the Defendants as follows:-

1. Unpaid loan and interest - ~~₦~~810,000.00
2. Cost of litigation - ~~₦~~607,500.00
- Total = ~~₦~~1,417,500.00

The brief facts of this case is that the Claimants gave the 1st Defendant a salary loan of ~~₦~~300,000.00 with interest of 9.5% per month which was to be repaid within one (1) year and six (6) months from 06/07/2021. The 2nd and 3rd Defendants signed for the 1st Defendant in the loan agreement as guarantors. The 1st Defendant defaulted in the repayment of the loan and accrued interest.

The Defendants were served with the summons and claim and they entered appearance. Plea of not liable was entered for the Defendants on 16th March 2023 and the case adjourned to 23rd March 2023 for pre-trial. The 1st Defendant in response filed

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade II, and the Presiding Magistrate, Small Claims Court 03, Port Harcourt, Rivers State.

defence and counterclaim on the 16th March 2023 wherein it was averred that the Claimants have been fully paid and even over paid with ₦260,000.00.

At the pre-trial, the Claimants tendered the following documents which were received in evidence and marked as exhibits namely:-

1. Salary Loan Application Form dated 25/5/2021 - Exhibit A
2. 1st Claimant's Access Bank Statement for 01/7/2021 to 27/9/2021 - Exh. B
3. 1st Claimant's Access Bank Statement for 28/9/2021 to 28/7/2022 - Exh. C
4. 1st Claimant's FCMB Statement for 01/7/2022 to 01/12/2022 - Exhibit D
5. 2nd Claimant's Certificate of Incorporation dated 22/7/2021 - Exhibit E.

The 1st Defendant claimed she had 9 documents but ended up not bringing any to Court during the trial proper.

The 1st Claimant testified as CW1 that the 1st Defendant was given a salary loan of ₦300,000.00 on a monthly interest of 9.5% for a period of one (1) year and six (6) months. The principal and interest for period amounted to ₦813,000.00 and the 1st Defendant agreed to a monthly repayment of ₦45,200.00 upon receipt of salary and overtime. The 1st Defendant from the evidence-in-chief of CW1 repaid a total of ₦371,000.00 only as at November 2022 and stopped. Under cross examination, the CW1 said the 1st Defendant repaid about ₦385,000.00 stating that the repayments are in the statement of account tendered in Court except the ₦50,000.00 cash paid in January 2022. The CW1 claimed that the remaining money is about ₦860,000.00 after much negotiation. The CW1 testified that the 1st Defendant defaulted and he reported her to the guarantor who pleaded and some money was paid.

The 1st Defendant a production staff of Dufil Prima Foods Plc (Indomie) testified as DW1 while the 2nd Defendant testified as DW2. The DW1 admitted that she took salary loan with interest from the Claimants as presented by the 1st Claimant. DW2 also corroborated the evidence of DW1 and admitted that he signed for the 1st Defendant as a guarantor. The 1st Defendant said she has repaid up to ₦669,000.00 as at January 2022 and that the payments were by transfer to the 1st Claimant by herself and her husband through bank and P.O.S outlets. The 1st Defendant stated under cross examination that aside from the transfers, she paid ₦60,000.00 cash as savings and ₦50,000.00 repayment which forms part of her acclaimed ₦669,000.00 total repayment. The 1st Defendant claimed she did not understand the 25% default fee contained in the loan agreement Exhibit A.

At the close of trial on the 19/04/2023, the case was adjourned to the 20/04/2023 for oral final address. On the 20/04/2023, the learned counsel for the 1st Defendant O. Eberechi Esq. addressed the Court orally on behalf of the 1st Defendant. The learned defence counsel argued that the Claimants failed to comply with Art. 2 (1) (e) of Small Claims P.D 2023, therefore case not properly initiated. Counsel cited the case of *Madukolu v Nkemdilim [1962]*. Counsel argued that the Claimant lacks the capacity to sue for the company. Counsel cited the case of *Salomon v Salomon*; he argued that the interest charged by the Claimant violates section 11 (1) (a) (b) & (c) of Moneylenders

Law as the Claimant is not a licenced moneylender; and that the evidence of the Claimant shows that the 1st Defendant paid ₦380,000.00 within one year and six months and additional ₦669,000.00. The 1st Claimant Prince Samson Eruani personally addressed the Court orally arguing that the 1st Defendant and DW2 admitted that the 1st Defendant is indebted to him. That he served demand notice and that the loan and interest were freely agreed. The 1st Claimant urged the Honourable Court to enter judgment in his favour. The case was thereafter adjourned for judgment.

By the evidence before the Court, 1st Claimant is a businessman and director of the 2nd Claimant company; the company is into daily savings and loan services to customers who must have 20% savings. The 1st Defendant was granted salary loan of ₦300,000.00 to solve rent problem on the 06/07/2021. The loan was for one year and six months with 9.5% interest per month making it ₦813,000.00 for the period of 18 months. The parties agreed on monthly repayment of ₦45,200.00 and 25% default fee on the interest and principal per month. The 1st Defendant stopped repayment of the loan on the 25/11/2022 after paying a total of ₦513,600.00 inclusive of her ₦60,000.00 daily savings and ₦50,000.00 cash payment. The one year, six months repayment period is from 06/7/2021 and elapsed on 05/01/2023.

The 1st Defendant admitted that she took the salary loan of ₦300,000.00 from the Claimants; and that they agreed on repayment within one year, six months with interest of ₦513,000.00. The 1st Defendant's grouse however, is on 25% default charge which was clearly agreed in Exhibit A. The 1st Defendant defaulted in the full repayment of the principal and interest as agreed as at 05/01/2023 when the loan tenor elapsed and is therefore liable to pay default fee. The law is that parties are bound by their agreement. See *A-G Rivers State v A-G Akwa Ibom State & Ors. [2011] LPELR-633 (SC)*.

A company is in law a person distinct from its promoters and directors. However, a director of a company is in the eye of the law an agent of the company for which he acts. See *Orieboji v Andy Sam Investment Co. Ltd. [2014] LPELR-23607 (CA)*. In this case the company and its director are parties, the suit is therefore competent. A demand letter is one of the check list items at the Small Claims Registry before a case is accepted for filing. The requirement of Art. 2 (1) (e) of SCPD 2023 can be deemed to have been complied with where the Claimant personally or through his lawyer serves demand letter. The 1st Claimant submitted demand letter dated 28th November 2022 at the Registry before the case was accepted for filing and the letter is in the Court's file. A court is entitled to look at the content of its file or record and/or refer to it in the consideration of any matter before it. See *Agbareh v Mimra [2008] All FWLR (Pt. 409) 559 at 564*. I hold that the 1st Defendant was issued with demand letter. However, the Claimants failed to serve the 2nd and 3rd Defendants with the mandatory demand letter. The 2nd Claimant company is registered with CAC as a company with object of savings and loan, and therefore falls under the exception in section 31 (b) of the Moneylenders Law Cap. 87 LRSN 1999. see also *Nwankwo v Nziribe [2004] 13 NWLR (Pt.890) 422 ratio 4*. I hold that the Claimants can grant loan with interest.

The law is that parties agreed interest rate is enforceable. See *Olalomi v Nig. Ind. Dev. Bank [2009] 7 MJSC 136 at 167 para. A*. By the proviso to section 13 (1) Moneylenders Law, parties in a loan contract can agree on default charge of simple interest not exceeding the rate charged on the principal sum. I find that the 25% default fee in the loan contract agreement is excessive and above the 9.5% agreed on the principal sum which is within what the law allows. Therefore for the 7 months default period, the 1st Defendant shall be liable to pay 9.5% default fee on the outstanding sum after deduction of ₦513,600.00 so far paid by the 1st Defendant as shown in Exhibits B, C and D. The 1st Defendant has paid ₦513,600.00 out of ₦813,000.00 thereby leaving a balance of ₦299,400.00 as unpaid principal and interest. The 9.5% default fee on the outstanding amount for 7 months is therefore ₦199,101.00.

I hold that the Claimants have partly proved their claim against the 1st Defendant. The 1st Defendant's counterclaim is vexatious and lacking in merit; it is accordingly dismissed. Judgment is entered for the Claimants as follows:-

1. The 1st Defendant is hereby ordered to pay the sum of ₦498,501.00 (Four Hundred and Ninety Eight Thousand, Five Hundred and One Naira) only as outstanding loan, interest and default fee to the Claimants forthwith.
2. The 1st Defendant is ordered to pay cost which I assess at ₦100,000.00 (One Hundred Thousand Naira) only to the Claimants forthwith.



C. G. Ali Esq.
Chief Magistrate Grade II
26/04/2023

REPRESENTATION:

1. O. Eberechi Esq. for 1st Defendant.
2. Others not represented by Lawyer.

